

ADMINISTRATIVE AND JUDICIAL FORFEITURE

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9-112.110 Administrative Forfeiture Policy

Properties subject to administrative forfeiture must be forfeited administratively, unless one or more of three exceptions applies. The three exceptions are:

- where several items of personalty are subject to civil forfeiture under the same statutory authority, on the same factual basis, have a common owner, and have a combined appraised value in excess of \$500,000, they shall all be forfeited judicially. Monetary instruments as defined by 31 U.S.C. § 5312(a) (3) and Part 103 of Title 31, C.F.R., hauling conveyances or seizures of personalty that occur over a period of weeks are not subject to this aggregation policy;
- prosecutive considerations dictate the criminal forfeiture of the property as part of a criminal prosecution;
- the Department's Criminal Division has expressly authorized judicial forfeiture based upon exceptional circumstances. *See* the Criminal Resource Manual at 2232.

9-112.120 Administrative Forfeiture of Bank Accounts

Bank accounts are not "monetary instruments" and therefore may not be administratively forfeited pursuant to 19 U.S.C. § 1607(a)(4). However, bank accounts of a value of \$500,000 or less may be administratively forfeited pursuant to 19 U.S.C. § 1607(a)(1). *See* the Criminal Resource Manual at 2233.

9-112.130 Judicial Forfeiture of Real Property

All forfeitures of real property or interests therein shall be conducted judicially. *See* the Criminal Resource Manual at 2208.

9-112.210 Sixty-Day Notice Period in All Administrative Forfeiture Cases

It is the policy of the Department of Justice that the "written notice" under 19 U.S.C. § 1607 to possessors, owners, and other interested parties, including lienholders, known at the time of seizure, shall occur not later than 60 days from the date of seizure. For interested parties determined after seizure, the "written notice" shall occur

within 60 days after reasonably determining ownership or interest. Waivers of this notice may be obtained in writing in exceptional circumstances from a designated official within the seizing agency. If a waiver is granted, the waiver must set forth the exceptional circumstances and be included in the administrative forfeiture case file. Where a reasonable effort of notice has not been made within the 60-day period and no waiver has been obtained, the seized property must be returned and the forfeiture proceeding terminated. (This policy does not change the existing policy that the phrase "date of seizure" for adoptive seizures means at the time of federal seizure.) *See* the Criminal Resource Manual at 2234.

9-112.220 Procedures for In Forma Pauperis Petitions

The following procedural steps will apply when considering IFP petitions to seizing agencies processing administrative forfeitures:

- All agencies shall provide express reference in the seizure notice to the owner's right to contest the forfeiture by either posting a claim and cost bond or petitioning for a waiver in the event he/she is indigent. All parties claiming indigent status must be provided with the IFP request form and instructions.
- All parties claiming indigent status must establish that they are unable to post the required bond for reasons of financial hardship and must do so in a sworn affidavit under oath that is submitted to the seizing agency. The format for this affidavit is Form 4 of the Federal Rules of Appellate Procedure.
- All cases involving claimants who establish, in the sworn affidavit of indigence submitted to the seizing agency, that they are unable to post the required bond will immediately be referred to the United States Attorney for judicial action.
- In cases where the seizing agency believes there are clear and articulable reasons for denial of the IFP petition, the request for waiver shall be referred to AFMLS for final determination.
- If the IFP petition is denied, the seizing agency shall inform the claimant that he/she may seek judicial review of the denial of the bond waiver request. The seizing agency shall inform the claimant that it will postpone the administrative declaration of forfeiture for 20 days in order to give claimant time to institute such a challenge if desired.
- In cases where a false IFP petition has been submitted to the agency resulting in the United States Attorney proceeding with judicial forfeiture in reliance upon the false information, prosecutions under 18 U.S.C. §§ 1001 and 1621 should be considered. *See* the Criminal Resource Manual at 2235.

9-112.230 Exemption of Certain Assets from Pre-trial Restraint of Substitute Assets

To be consistent with the Department's position on proposed legislation, the United States Attorneys should adhere to the following policy: where orders restraining substitute assets are permitted and entered, United States Attorneys should agree to allow the exemption from such orders of those legitimate assets that are needed to pay attorneys' fees, necessary living expenses, and the expenses of maintaining restrained assets. *See* the Criminal Resource Manual at 2236.

9-112.240 Prior Approval Requirements

Prior approval of the Criminal Division is required for the forfeiture of attorneys' fees and preindictment ex parte applications for Temporary Restraining Orders in criminal forfeiture cases. *See* USAM 9-119.200 for the Department's policy regarding forfeiture of attorneys' fees.

9-112.320 Cost Bond Procedures

Upon receipt of the cost bond from the seizing agency, the United States Attorney shall forward the bond to the U.S. Marshal. (United States Attorneys usually will receive cost bonds from the seizing agencies after the agency has determined that the claim and the bond are in proper form. *See, e.g.*, 21 C.F.R. § 1316.76(a), 28 C.F.R. § 8.8(b). However, United States Attorneys usually will not receive cost bonds from the U.S. Customs Service because it is the general policy of the Customs Service to place the cost bond in a Customs Service suspense account pending resolution of the claim.) The U.S. Marshal shall hold the bond in the Seized Asset Deposit Fund pending resolution of the claim for which the cost bond was filed.

If *any* of the property for which the cost bond was filed is judicially forfeited:

- judgment for allowed costs should be included in the judgment of forfeiture or sought by separate motion and order;
- the costs allowed should be recovered from the amount of the cost bond; and
- the amount remaining, if any, after the deduction of allowed costs should be returned.

In the settlement of judicial forfeiture cases, the United States Attorney shall retain the authority to waive the costs incurred in the case and return the bond.

If *none* of the property for which the cost bond was filed is forfeited, the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant when the property is returned.

9-112.330 Administrative Forfeiture by Settlement Agreement After a Cost Bond has been Filed

When a claim and a cost bond have been filed and the claim is withdrawn pursuant to a settlement agreement, the Department's policy regarding the disposition of the cost bond is as follows.

If allowable costs *have not been* incurred: the settlement agreement should provide for return of the cost bond, or the entire amount deposited as the cost bond; and the cost bond, or the entire amount deposited as the cost bond, should be returned to the claimant pursuant to the settlement agreement.

If allowable costs *have been* incurred: the settlement agreement should provide for return of the amount of the cost bond remaining, if any, after deduction of an agreed upon sum specified as allowable costs; the agreed allowable costs should be recovered from the cost bond; and the bond amount remaining, if any, after deduction of agreed costs should be returned pursuant to the settlement agreement. *See also* the USAM at 9-113.310, for a discussion regarding the use of Administrative Forfeiture in settlement of civil Judicial Forfeitures stemming from Administrative Actions (policy concerning requirement that a forfeiture that proceeds administratively pursuant to written settlement agreement include specific reference to the withdrawal of the claim and the disposition of the cost bond).

All final orders of forfeiture in judicial cases following an administrative seizure and referral must contain a provision for the disposition of the cost bond in accordance with the policies outlined above. Failure to include such a provision may prohibit the United States from applying the cost bond to cover case-related expenses and may result in the return of the cost bond to the claimant by the United States Marshals Service.

Further information on cost bonds is available in the Criminal Resource Manual at 2237 (Disposition of Cost Bonds), 2238 (Costs Chargeable Against Cost Bond), and 2239 (Cost Bond Disposition Generally and in U.S. Customs Service Cases).